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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,051	12/15/2003	Vincent J. Morgan	DE-01-03	4030

7590

11/01/2006

John A. Haug  
PO Box 386  
West Harwich, MA 02671

EXAMINER
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BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/736,051	Applicant(s) MORGAN, VINCENT J.	
	Examiner Melba Bumgarner	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sapkos (5,816,809). Sapkos discloses an implant member comprising an elongated generally cylindrical post having a longitudinal axis 226, a coronal end and an apical end, the coronal end having an abutment portion having a smoothly curved basal portion 202 integrally formed at the coronal end of the post, cortical threads 206 formed along a first axial length portion of the post proximate to the abutment portion and an unthreaded second axial length portion 208 contiguous to the first axial length portion, a third smooth non-threaded axial length portion 210 between the basal portion and threaded first axial length portion formed with a taper of increasing diameter from the apical end toward the coronal end (figure 2). The first and second axial length portions are generally equal in length.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sapkos in view of Morgan et al. (6,227,857). Sapkos discloses a member that shows the limitations as described above; however, Sapkos does not show an epithelial stop. Morgan et al. teach an implant member comprising an epithelial stop in the form of a circumferential groove 32 formed in a tapered portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the member of Sapkos to have the circumferential groove of Morgan et al. in order to limit epithelial migrating that can cause loss of bone supporting the implant in view of Morgan et al.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sapkos in view of Halldin et al. (6,874,386). Sapkos discloses a member that shows the limitations as described above and the abutment portion including a nose projecting from the basal portion, the nose being formed with first and second axial length portions each of which is tapered with a decreasing diameter moving from the apical end to the coronal end, however, Sapkos does not show a retention step. Halldin et al. teach a member having a nose comprising a retention step 9 being formed between the first and second axial length portions 4,5 of the nose, the first axial length portion of the nose being contiguous with the basal portion, the nose having a circumference on the coronal side of the step greater than a circumference of the nose on the apical side of the step. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the member of Sapkos to have the retention step of Halldin et al. in order to enable engagement of a coping in view of Halldin et al.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sapkos in view of Bulard et al. (6,716,030). Sapkos discloses a member that shows the limitations as described

above and the abutment portion including a nose projecting from the basal portion; however, Sapkos does not show a generally spherical free end. Bulard et al. teach an implant member comprising the nose having a generally spherical free end and an O-ring groove formed adjacent to the end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the member of Sapkos to have the nose as in Bulard et al. in order to be able to connect the abutment portion to fixed or removable prosthesis in view of Bulard et al.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sapkos. Sapkos discloses a member that shows the limitations as described above and the abutment portion including a nose projecting from the basal portion and the nose having a free end formed with a tapered coping receiving surface. Sapkos does not show a threaded bore through the free end. However, Sapkos shows external thread formed along the longitudinal axis in which the coping has a threaded bore. It would have been obvious to one having ordinary skill in the art at the time the invention have the nose with a threaded bore in Sapkos, since a mere reversal of the essential working parts of a member involves only routine skill in the art.

#### ***Response to Arguments***

8. Applicant's arguments filed August 14, 2006 have been fully considered but they are not persuasive. In response to applicant's argument that the claimed post is intended for direct engagement with bone material, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The prior art structure meets the

claimed limitations and is capable of engagement with bone material. As to the argument that threads of the prior art not being described as specialized cortical bone threads, it is noted that the term neither in the claim nor specification gives the threads a specific structure.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

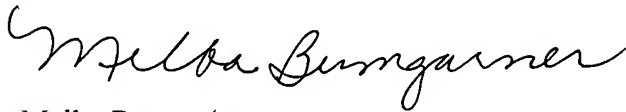
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Melba Bumgarner". The signature is written in a cursive, flowing style.

Melba Bumgarner  
Primary Examiner